

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP

Charles K. Verhoeven (Bar No. 170151)

2 charlesverhoeven@quinnemanuel.com

David A. Perlson (Bar No. 209502)

3 davidperlson@quinnemanuel.com

Melissa Baily (Bar No. 237649)

4 melissabaily@quinnemanuel.com

John Neukom (Bar No. 275887)

5 johnneukom@quinnemanuel.com

Jordan Jaffe (Bar No. 254886)

6 jordanjaffe@quinnemanuel.com

50 California Street, 22<sup>nd</sup> Floor

7 San Francisco, California 94111-4788

Telephone: (415) 875-6600

8 Facsimile: (415) 875-6700

9 Attorneys for WAYMO LLC

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 SAN FRANCISCO DIVISION

13 WAYMO LLC,

14 Plaintiff,

15 vs.

16 UBER TECHNOLOGIES, INC.;  
OTTOMOTTO LLC; OTTO TRUCKING LLC,

17 Defendants.

CASE NO. 3:17-cv-00939

**PLAINTIFF WAYMO LLC'S OFFER OF  
PROOF REGARDING DEFENDANTS'  
TRADE SECRET MISAPPROPRIATION**

Judge: The Honorable William Alsup

Trial Date: October 10, 2017

**REDACTED VERSION OF DOCUMENT  
SOUGHT TO BE FILED UNDER SEAL**

Pursuant to the Court's order at the July 26 hearing and the Court's guidance (Aug. 23, 2017 Hearing Tr. at 40:15-18),<sup>1</sup> Plaintiff Waymo LLC ("Waymo"<sup>2</sup>) submits this offer of proof regarding Defendants Uber Technologies, Inc. and Ottomotto, LLC (together "Uber") and Otto Trucking, LLC ("Otto Trucking") (collectively, "Defendants") regarding Defendants use of Waymo's trade secrets.

Waymo has previously provided sufficient evidence of trade secret misappropriation for this Court to grant provisional relief, based on review of voluminous evidence provided by Waymo. Dkt. 426. In the course of discovery (currently ongoing) Waymo has developed evidence of Uber's misappropriation and use of all nine trade secrets in its final election, as detailed below.

Waymo notes that given the time limit and the period of discovery at this time, this offer of proof is necessarily rushed and may be incomplete. Today is the last day of fact discovery and due to the expedited schedule there are multiple depositions taking place. Today is also the deadline for the parties to submit initial expert reports. Dkt. 563. Waymo has also been required to respond to two summary judgment precis submitted by Defendants today upon two days' notice. Dkt. 1308. The offer of proof set forth below represents Waymo's best effort to respond fully to the Court under the circumstances. To the extent the Court intends to make any rulings based on this offer, Waymo requests the opportunity to brief a formal motion and be given the opportunity for a briefing schedule to do so. As the Court undoubtedly knows, Waymo has a constitutional right to a jury trial on its trade secret misappropriation claims, and that right can be taken away only where there is no genuine material dispute of fact.

#### **I. WAYMO'S OFFER OF PROOF AS TO UBER**

***Waymo Takes Reasonable Measures to Keep Its Trade Secrets Secret:*** Generally, for all of Waymo's asserted trade secrets, the evidence to be presented by Waymo at trial in this case through its witnesses (including at least Gary Brown, Pierre-Yves Droz, Michael Janosko, and Tim Willis) and its expert witness Lambertus Hesselink will show that Waymo takes reasonable measures to protect its

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<sup>1</sup> At the Court's direction, Waymo is not including its expert reports in this filing, which include a more exhaustive marshalling of all the evidence it intends to present at trial through its experts for trade secret misappropriation. However, Waymo stands ready and willing to provide these reports or the evidence cited therein if the Court wishes.

<sup>2</sup> As used herein, "Waymo" also includes Google's Project Chauffeur.

1 trade secrets. In particular, the evidence to be presented at trial will show that Waymo takes steps to  
 2 protect its trade secrets, including its LiDAR-related trade secrets, from disclosure by employees  
 3 (through, for example, Waymo's employee code of conduct and annual information security trainings),  
 4 former employees (through, for example, exit interview processes), and vendors (through, for  
 5 example, non-disclosure agreements). The evidence will also show that Waymo takes reasonable  
 6 steps to protect its electronically-stored information through, for example, extensive server, network,  
 7 and user-level security measures such as access controls, as well as monitoring and forensic  
 8 investigations as needed. The evidence will also show that Waymo takes reasonable steps to protect  
 9 its physical assets (through, for example, locking, guarding, and controlling access to its premises),  
 10 including its LiDAR devices (through, for example, guarding using dark domes to cover its LiDARs  
 11 and further placing key trade secret-related components deep inside the device where it cannot be  
 12 observed from public roads).

13 ***Waymo's Trade Secrets Are Not Generally Known or Readily Ascertainable:*** With respect to  
 14 each one of Waymo's asserted trade secrets, the evidence to be presented by Waymo at trial in this  
 15 case through its witnesses (including at least Dmitri Dolgov, Pierre-Yves Droz, Bernard Fidric, and  
 16 Ben Ingram), its expert witness Lambertus Hesselink, and Defendants' witnesses (including at least  
 17 Daniel Gruver, James Haslim, Asheem Linaval, and Gaetan Pennecot) will show that none of  
 18 Waymo's asserted trade secrets are generally known in the relevant field, nor are they readily  
 19 ascertainable. In particular, the evidence to be presented at trial will show that, outside the LiDAR  
 20 devices designed by Waymo and by Uber, no other LiDARs embody Waymo's asserted trade secrets.  
 21 Waymo also expects that, with respect to each one of Waymo's asserted trade secrets, the evidence to  
 22 be presented by Waymo at trial in this case through its witnesses (including at least Dmitri Dolgov,  
 23 Pierre-Yves Droz, Bernard Fidric, and Ben Ingram), its expert witness Lambertus Hesselink, and  
 24 Defendants' witnesses (including at least Scott Boehmke, James Haslim, and Gaetan Pennecot) will  
 25 show that Waymo's asserted trade secrets none of Waymo's asserted trade secrets derive independent  
 26 economic value from their secrecy. In particular, the evidence to be presented at trial will show that  
 27 Waymo has devoted years of research and development time and millions of dollars into developing  
 28

1 its trade secrets and that their secrecy gives Waymo a competitive advantage by, for example,  
 2 preventing competitors from short-circuiting the design process.

3 ***Uber's Misappropriation of Waymo's Trade Secrets:*** With respect to Uber's  
 4 misappropriation through acquisition, use, or disclosure of Waymo's asserted trade secrets, the  
 5 evidence to be presented by Waymo at trial in this case through its witnesses (including at least Gary  
 6 Brown and Kristinn Gudjonsson) and Uber's witnesses (including at least Scott Boehmke, Daniel  
 7 Gruver, James Haslim, Eric Meyhofer, and Gaetan Pennecot) will show that Anthony Levandowski  
 8 improperly downloaded over 14,000 files from Waymo's SVN repository and additional documents  
 9 from Waymo's Google Drive servers, and that Uber hired Mr. Levandowski to lead its self-driving car  
 10 project and acquired his company without implementing any measures to prevent Mr. Levandowski  
 11 from consulting the misappropriated documents in the course of his work for Uber. The evidence to  
 12 be presented by Waymo through its expert witness Jim Timmins and Uber's witnesses (including at  
 13 least John Bares, Travis Kalanick, Emil Michael, Cameron Poetzsch, and Nina Qi) will show that  
 14 Uber instead agreed, in the context of its purchase of Otto, to indemnify Mr. Levandowski and others  
 15 for any prior "Bad Acts," including trade secret misappropriation, so long as Mr. Levandowski  
 16 disclosed those "Bad Acts" to a third-party due-diligence consultant, Stroz Friedberg (Uber and Mr.  
 17 Levandowski have asserted privilege over Mr. Levandowski's disclosures to Stroz). Further, Uber [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED] would be aided and hastened by Mr. Levandowski's incorporation  
 20 into Uber of Waymo's stolen technology. Further, the evidence will show that Uber did not restrict  
 21 Mr. Levandowski's ability to bring his personal devices to Uber—personal devices that Uber has  
 22 never inspected and that may well contain the 14,000 stolen files—or to consult those devices during  
 23 LiDAR development. The evidence will also show that Mr. Levandowski was present and contributed  
 24 to hundreds if not thousands of emails, meetings, and discussions concerning LiDAR development.

25 Further evidence of Uber's misappropriation through acquisition, use, or disclosure of  
 26 Waymo's asserted trade secrets to be presented by Waymo at trial in this case is outlined below, on a  
 27 trade secret by trade secret basis.

**A. Trade Secret No. 2**

As to Waymo's Trade Secret No. 2 [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] Former Waymo engineers and current Uber engineers admit they are aware of no other LIDAR with this design. Pennecot 6/14/17 Depo. 547:9-12 [REDACTED]  
[REDACTED] The evidence to be presented by Waymo at trial in this case through its expert witness Lambertus Hesselink and Uber's witnesses (including at least Scott Boehmke, James Haslim, Daniel Gruver, and Gaetan Pennecot) will show that Uber uses Fuji, a LiDAR system comprising [REDACTED]

[REDACTED]  
[REDACTED]  
For example, the undisputed evidence will show that the [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

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[REDACTED]

The evidence (including at least testimony from Waymo witnesses Gary Brown, Kristinn Gudjonsson, and Pierre-Yves Droz) will further show that this trade secret is fully described within the 14,000 files improperly downloaded by Anthony Levandowski on December 11, 2015 (for example, [REDACTED]). When asked about whether he used these files in designing Fuji, Mr. Levandowski declined to answer and took the Fifth Amendment. 8/22/2017 Levandowski Depo. at 103:19-104:3, 106:21-107:4, 119:17-120:2, 121:13-23, 128:1-10.

One former Waymo engineer and current Uber engineer admitted that the only LIDARs in the world he knows of with this design characteristic is Waymo's GBR3 and the Fuji. Pennecot 6/14/17 Depo. 226:11-24 ("Q Okay. [REDACTED]).

[REDACTED] Q What are you aware of? A GBR3. Q Okay. Apart from GBR3, are there any others that you're aware of? A I'm not aware of any others.")

As the Court previously observed, "that Fuji — and, at least on this record, no other LiDAR — copies such specific GBR3 specifications is striking evidence suggesting that at least some information from Waymo's files has already found its way into Uber's LiDAR designs." Dkt. 426 at 15.

**B. Trade Secret No. 7**

As to Waymo's Trade Secret No. 7 [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] Former Waymo engineers and current Uber engineers admit they're aware of no other LIDAR with this design. D. Gruver 8/14/17 Depo. at 323:6-14 ("And are you aware of any other LiDAR in the world that have this exact same design? A. Sorry. Describe "this design." Q. [REDACTED] A. I am not aware of [REDACTED] in other LiDARs.")

The evidence to be presented by Waymo at trial in this case through its expert witness Lambertus Hesselink and Uber's witnesses (including at least James Haslim, Daniel Gruver, and Gaetan Pennecot) will show that Uber uses Fuji, a LiDAR system comprising a [REDACTED]

[REDACTED]

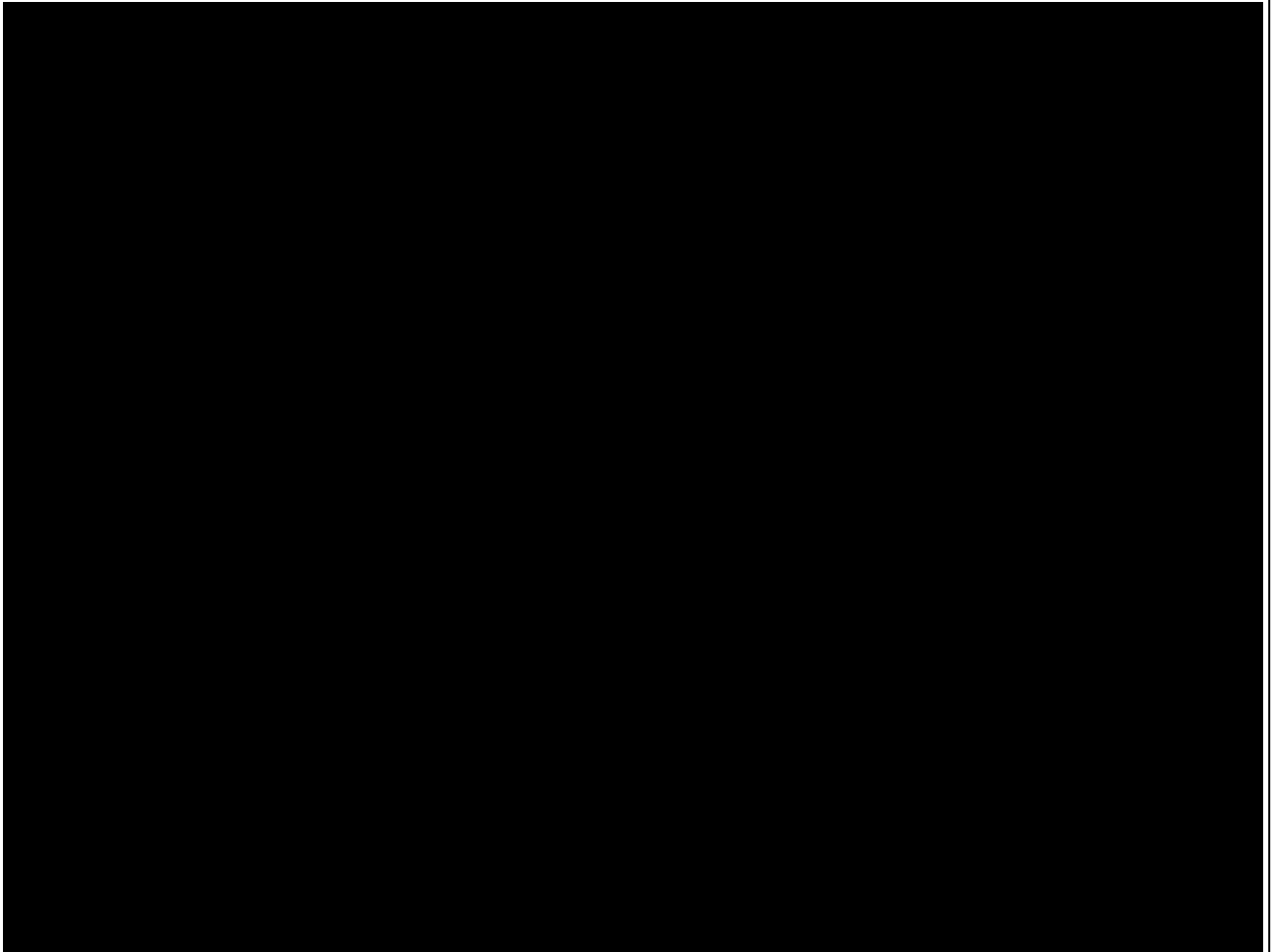
[REDACTED]

[REDACTED] For example, the undisputed evidence will show that [REDACTED]

[REDACTED]

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<sup>3</sup> As described with more particularity in Dkt. 335-4 at 2-4.



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16 The evidence (including at least testimony from Waymo witnesses Gary Brown, Kristinn  
17 Gudjonsson, and Pierre-Yves Droz) will further show that this trade secret is fully described within the  
18 14,000 files improperly downloaded by Anthony Levandowski on December 11, 2015 (for example, ■

19 ■

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21 ■. When asked about whether he used these files in designing Fuji, Mr.  
22 Levandowski declined to answer and took the Fifth Amendment. 8/22/2017 Levandowski Depo.  
23 at 103:19-104:3, 106:21-107:4, 119:17-120:2, 121:13-23, 128:1-10.

24 Former Waymo engineer Gaetan Pennecot and current Uber engineer further admitted he  
25 included this design based on Waymo's LIDAR design. Pennecot 6/16/17 Depo. at 408:6-21 ("Q.  
26 Why did you choose to ■? A. Because I -- I have done it  
27 from experience. . . . Q. Now, you said you had experience doing -- ■.  
28 Where did you have that experience? A. Back at Google. Q. Was there a LiDAR at Google in



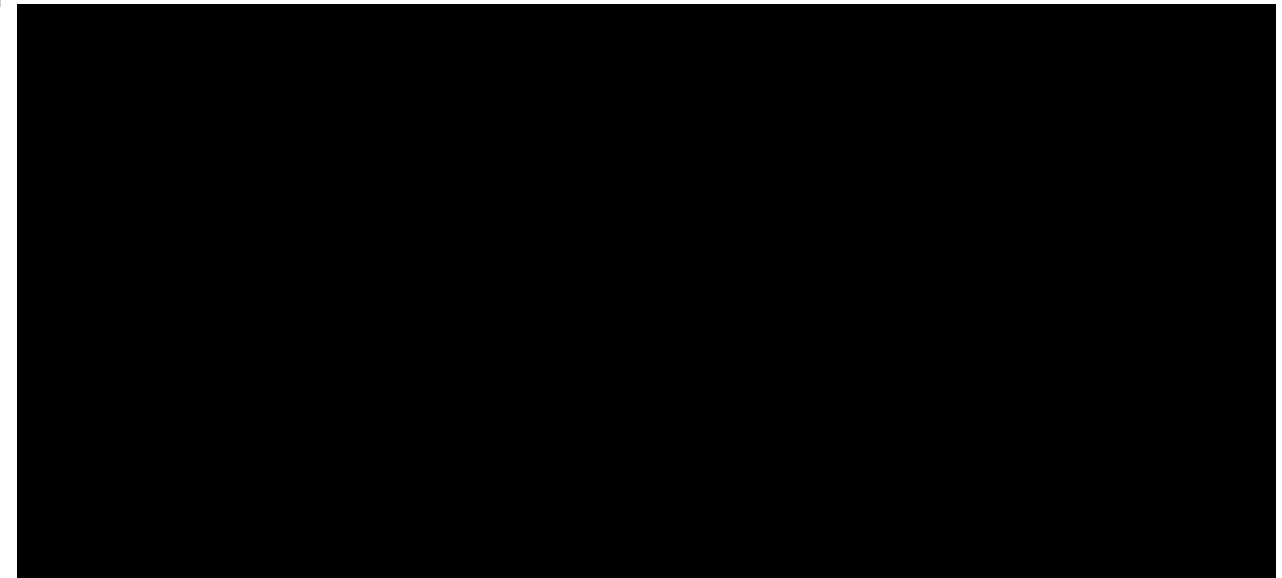
1 which you used [REDACTED]? A. GBR.”) As previously observed by  
2 the Court: “Uber’s Fuji indeed [REDACTED]. Defendants do not  
3 deny this and have no credible explanation for how they arrived at [REDACTED]  
4 [REDACTED]” Dkt. 426 at 14.

5 **C. Trade Secret No. 9**

6 As to Waymo’s Trade Secret No. 9 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]

11 [REDACTED] As explained in Waymo’s response to Uber’s precis, this trade secret  
12 is not known in the field. Dkt. 1342 (quoting 8/3/17 Droz. Depo. at 228:17-233:13.) The  
13 evidence to be presented by Waymo at trial in this case through its expert witness Lambertus  
14 Hesselink and Uber’s witnesses (including at least James Haslim, Daniel Gruver, and Gaetan  
15 Pennecot) will show that Uber uses Fuji, a LiDAR system comprising [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 [REDACTED] For example, the evidence will show that [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
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The evidence will also show that these overlaps are not a coincidence, as testified to by Uber engineers (and former Waymo engineers) Gaetan Pennecot and Daniel Gruver. (8/9/17 Pennecot Dep. at 641:6-643:7 (“Q. ... [REDACTED] is not a coincidence, is it? ... A. I mean, in some ways, yeah, it’s – it’s in my head. I have, like, some experience from before, and I -- and you know -- like, you’re always impacted by your previous experience.”); 8/4/17 Gruver Dep. at 274:22-25 (“Q. Okay. You designed [REDACTED], in part, based on your knowledge of [REDACTED] that was designed at Google, right? A. Yes.”); *id.* at 275:5-8 (“Q. You used the knowledge from your work on [REDACTED] at Google to help [REDACTED], right? A. Yes.”).)

The evidence will further show that Uber [REDACTED]

[REDACTED] (UBER00011613.)

**D. Trade Secret No. 13**

As to Waymo’s Trade Secret No. 13 [REDACTED]

Former Waymo engineers and current Uber engineers admit they’re aware of no other LIDAR

1 with this design. 6/14/17 Pennecot Depo. (“Q Do you know of any other LiDAR manufacturers  
2 that [REDACTED]? A No, I don't.”) The  
3 evidence to be presented by Waymo at trial in this case through its expert witness Lambertus  
4 Hesselink and Uber’s witnesses (including at least James Haslim, Daniel Gruver, and Gaetan  
5 Pennecot) will show that Uber uses [REDACTED]  
6 [REDACTED]  
7 [REDACTED] in Fuji. For  
8 example, the evidence will show that both Waymo and Uber [REDACTED]  
9 [REDACTED]  
10 [REDACTED]

11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]

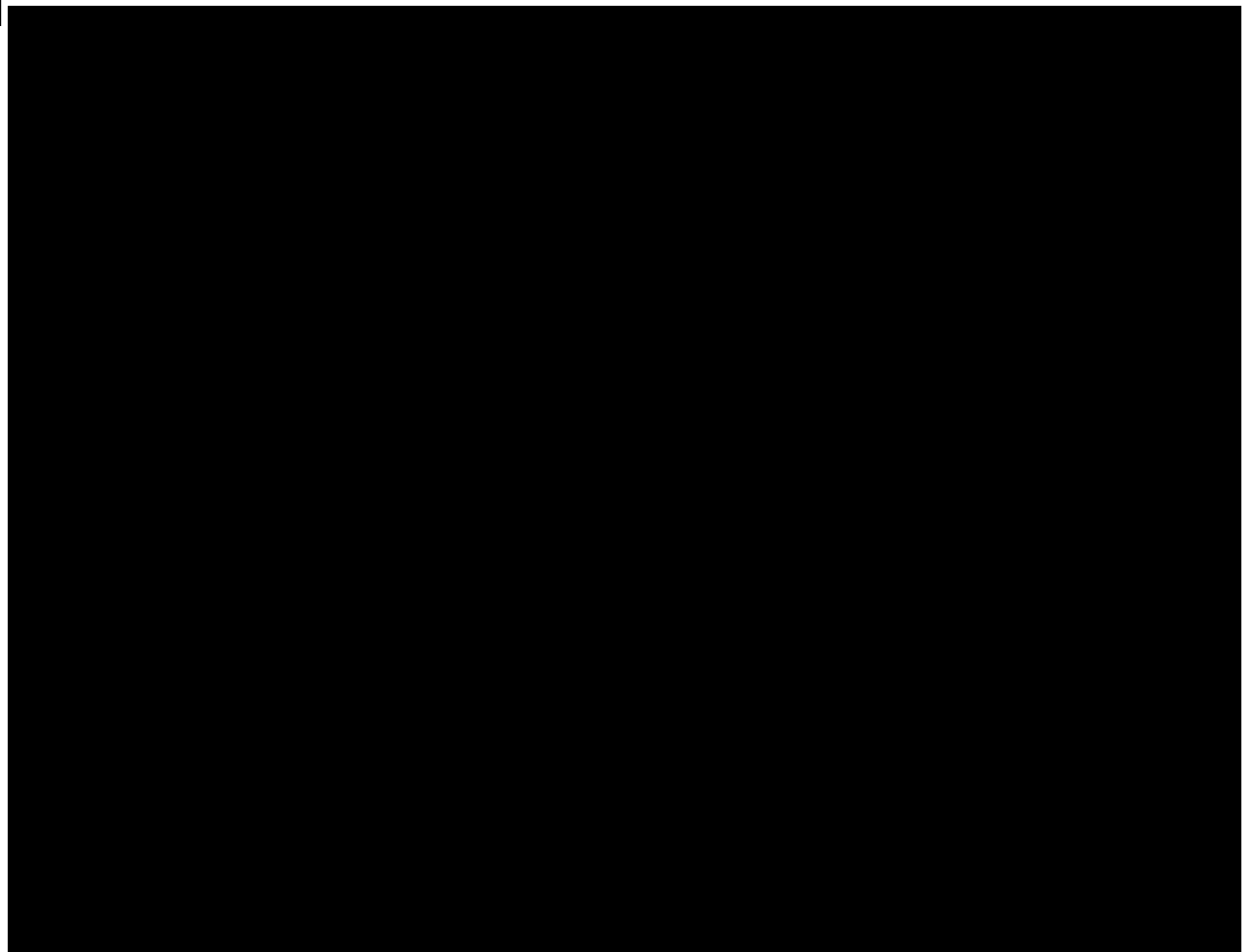
27 Uber engineer (and former Waymo engineer) Gaetan Pennecot was involved in the design  
28 of [REDACTED] and admitted that the design [REDACTED] at Uber was based on his “prior

1 experience” at Waymo. (6/14/17 Pennecot Dep. at 262:3-265:11; 6/16/17 Pennecot Dep. at  
2 424:18-23; 8/9/17 Pennecot Dep. at 572:20-574:25.)

3 **E. Trade Secret No. 14**

4 As to Waymo’s Trade Secret No. 14 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]

8 As admitted by former  
9 Waymo contractor and current Uber engineer, the claimed trade secret is not generally known.  
10 (See 4/13/17 Linaval Depo. at 59:16-19 (“Q. Are you aware of any other LiDAR designs that use  
11 [REDACTED]? A. I’m not aware of any  
12 others.”). The evidence to be presented by Waymo at trial in this case through its expert witness  
13 Lambertus Hesselink and Uber’s witnesses (including at least James Haslim, Daniel Gruver, Asheem  
14 Linaval, and Gaetan Pennecot) will show that Uber uses [REDACTED]  
15 [REDACTED]  
16 [REDACTED]. In particular,  
17 the evidence will show that both Waymo and Uber use [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]



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17 The evidence (including at least testimony from Waymo witnesses Gary Brown, Kristinn  
18 Gudjonsson, and Pierre-Yves Droz) will further show that this trade secret is reflected in part within  
19 the 14,000 files improperly downloaded by Anthony Levandowski on December 11, 2015 (for  
20 example, [REDACTED]

21 [REDACTED]  
22 [REDACTED]. When asked about whether he used these files in designing  
23 Fuji, Mr. Levandowski declined to answer and took the Fifth Amendment. 8/22/2017  
24 Levandowski Depo. at 103:19-104:3, 106:21-107:4, 119:17-120:2, 121:13-23, 128:1-10.

25 The evidence will also show that these overlaps are not a coincidence, as Uber engineers  
26 (and former Waymo engineers) Daniel Gruver and Gaetan Pennecot were involved in the design  
27 of [REDACTED] as reflected by the metadata. (Gruver  
28 Depo. Ex. 501; Pennecot Depo. Ex. 531; *see, e.g.*, 6/16/17 Pennecot Depo. at 352:16-19 (“I would

1 say [REDACTED]  
 2 [REDACTED]"); *id.* at 353:17-21 ("Q. [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]").)

6 **F. Trade Secret No. 25**

7 As to Waymo's Trade Secret No. 25 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]

11 [REDACTED] This trade secret is not known in the field.  
 12 (*See* 8/8/17 Dolgov Depo. at 153:5-12 ("I can't -- I'm not sure if I can quantify the value. But it --  
 13 as I just mentioned, it's -- in my mind, the value is tremendous because [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]").) The evidence to be presented by Waymo  
 17 at trial in this case through its expert witness Lambertus Hesselink and Uber's witnesses (including at  
 18 least John Bares) will show that Uber improperly acquired from Anthony Levandowski trade secret  
 19 information and used it to helped guide its LiDAR research and development efforts. For example,  
 20 the evidence will show that, in attempting to sell Ottomotto to Uber, Mr. Levandowski [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]  
 26 [REDACTED]  
 27 [REDACTED]  
 28 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
(Jaffe Ex. 4, [REDACTED]  
5 [REDACTED]  
6 [REDACTED])  
7

Waymo's trade secret information provided by Mr. Levandowski to Uber [REDACTED]  
8 [REDACTED] which consisted of [REDACTED]  
9 [REDACTED] (UBER00071655 at  
10 UBER00071949 (emphasis added).)  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]

24 As another example, [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED] (UBER00018068.) Such information is reflected in  
28 Waymo's Trade Secret No. 25, as depicted below:

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 These examples are direct evidence of Anthony Levandowski providing Waymo's trade secret  
8 information for use in designing Uber's LIDAR sensor designs.

9 **G. Trade Secret No. 90**

10 As to Waymo's Trade Secret No. 90 [REDACTED]  
11 [REDACTED] The evidence will show that this presentation contains  
12 Waymo's [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]

25 The evidence (including at least testimony from Waymo witnesses Gary Brown, Kristinn  
26 Gudjonsson, and Pierre-Yves Droz) will further show that this trade secret is described in detail in at  
27 least two documents files improperly downloaded by Anthony Levandowski as he was in discussions  
28



1 with Uber to form a new LiDAR company: [REDACTED]  
2 [REDACTED] (WAYMO-UBER-00085777.) When asked about whether he  
3 used these files in designing fiber laser designs at Uber/Otto, Mr. Levandowski declined to answer  
4 and took the Fifth Amendment. 8/22/2017 Levandowski Depo. at 103:19-104:3, 106:21-107:4,  
5 119:17-120:2, 121:13-23, 128:1-10.

6 The evidence will also show that, while still employed by Waymo, Anthony Levandowski

7 [REDACTED]

8 [REDACTED]

9 [REDACTED] (5/4/17 Haslim Dep. at 129:24-132:9, 134:10-135:8, 136:16-137:21;

10 8/9/17 Haslim Dep. at 516:12-518:24, 537:14-541:25.) [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED] [REDACTED]

15 [REDACTED]

16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

26  
27 The evidence to be presented by Waymo at trial in this case through its expert witness  
28 Lambertus Hesselink and Uber's witnesses (including at least James Haslim) will show that Uber

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]  
 10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]

13 Defendants have no credible explanation for Mr. Levandowski's input into this design and its  
 14 overlap with Waymo's [REDACTED] 5/4/17 Haslim Depo. at 129:7-23 ("Q. Did you ever  
 15 raise to any of your fellow employees at Tyto LiDAR, hey, why are we talking with Mr. Levandowski  
 16 about the work that we're doing? A. No. Q. Never came up? A. Not to my recollection. Q. You never  
 17 asked anyone? A. No. Q. You didn't think it was odd that this person who doesn't work for the  
 18 company was talking about your work with you? A. No. Q. Did you know that Mr. Levandowski was  
 19 working on LiDAR at Waymo at the time? A. I knew he was working for Google at the time, and I  
 20 didn't know the details of what specifically he was working on."). Mr. Haslim further admitted he  
 21 used the information provided by Mr. Levandowski to [REDACTED] for Otto and Uber. 5/4/17  
 22 Haslim Depo. at 136:16-24.

23 **H. Trade Secret No. 96**

24 As to Waymo's Trade Secret No. 96 [REDACTED]  
 25 [REDACTED] This trade secret is not generally known, and  
 26 in particular [REDACTED] is not known. (See 8/3/17 Droz  
 27 Depo. at 278:3-8 . Waymo's [REDACTED] is not either known or readily  
 28 ascertainable. For example, [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]

8 The evidence will show that prior LiDAR designs produced by others demonstrates that  
9 Waymo's [REDACTED] is unique and innovative. [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 [REDACTED] (See,  
24 e.g., Boehmke Depo. Ex. 455 ¶¶ 8-10.) Even at that time, Uber [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1 [REDACTED]  
2 [REDACTED] (Meyerhofer Depo. Ex. 887.)  
3 [REDACTED]  
4 [REDACTED] This suggested design fails to [REDACTED]  
5 [REDACTED]  
6 [REDACTED] Velodyne's corporate designee, subpoenaed by  
7 Uber in this case, was questioned about Velodyne's [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 (Aug. 23, 2017 Nestinger Rough Depo. at 34:2-36:12, 142:8-144:11.) Thus, the Velodyne  
11 approach [REDACTED]  
12 [REDACTED] These approaches are distinct from, and do not disclose the design reflected in Waymo's  
13 [REDACTED]  
14 [REDACTED] allegedly developed by Uber engineer Scott Boehmke in [REDACTED]  
15 also did not disclose Waymo's Trade Secret No. 96 or render it readily ascertainable. [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED] This design fails to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED] (Haslim Depo. Ex. 586.) [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED] [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] [REDACTED]

8 [REDACTED] (UBER00060113) According to public news reports, “state of the art” was

9 Mr. Levandowski’s code term instead of saying the words “Google” or “Waymo.”<sup>4</sup>

10 Uber’s 7.3.2017 Supplemental Log Pursuant to Orders on Motion for Preliminary Relief  
11 [ECF No. 426] and Special Master's Protocol [ECF No. 500] (“LIDAR Log”) is further evidence  
12 that Mr. Levandowski [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 Mr. Levandowski [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 The documentary evidence further shows that Anthony Levandowski [REDACTED]

24 [REDACTED]

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26 <sup>4</sup> See [https://www.theinformation.com/the-informations-leaders-and-laggards-in-self-driving-](https://www.theinformation.com/the-informations-leaders-and-laggards-in-self-driving-cars)  
27 [cars](https://www.theinformation.com/the-informations-leaders-and-laggards-in-self-driving-cars) (last accessed Aug. 24, 2017).  
28

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]

6 [REDACTED]  
7 [REDACTED]

8 [REDACTED]  
9 [REDACTED]

10 (UBER00236495.)<sup>5</sup>

11 In sum, [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED] The

15 evidence to be presented by Waymo at trial in this case through its expert witness Lambertus  
16 Hesselink and Uber's witnesses (including at least Scott Boehmke, Daniel Gruver, James Haslim,  
17 Gaetan Pennecot) will show that the resulting Uber's Fuji PCB design is strikingly similar to Waymo's  
18 Trade Secret No. 96, as depicted below:

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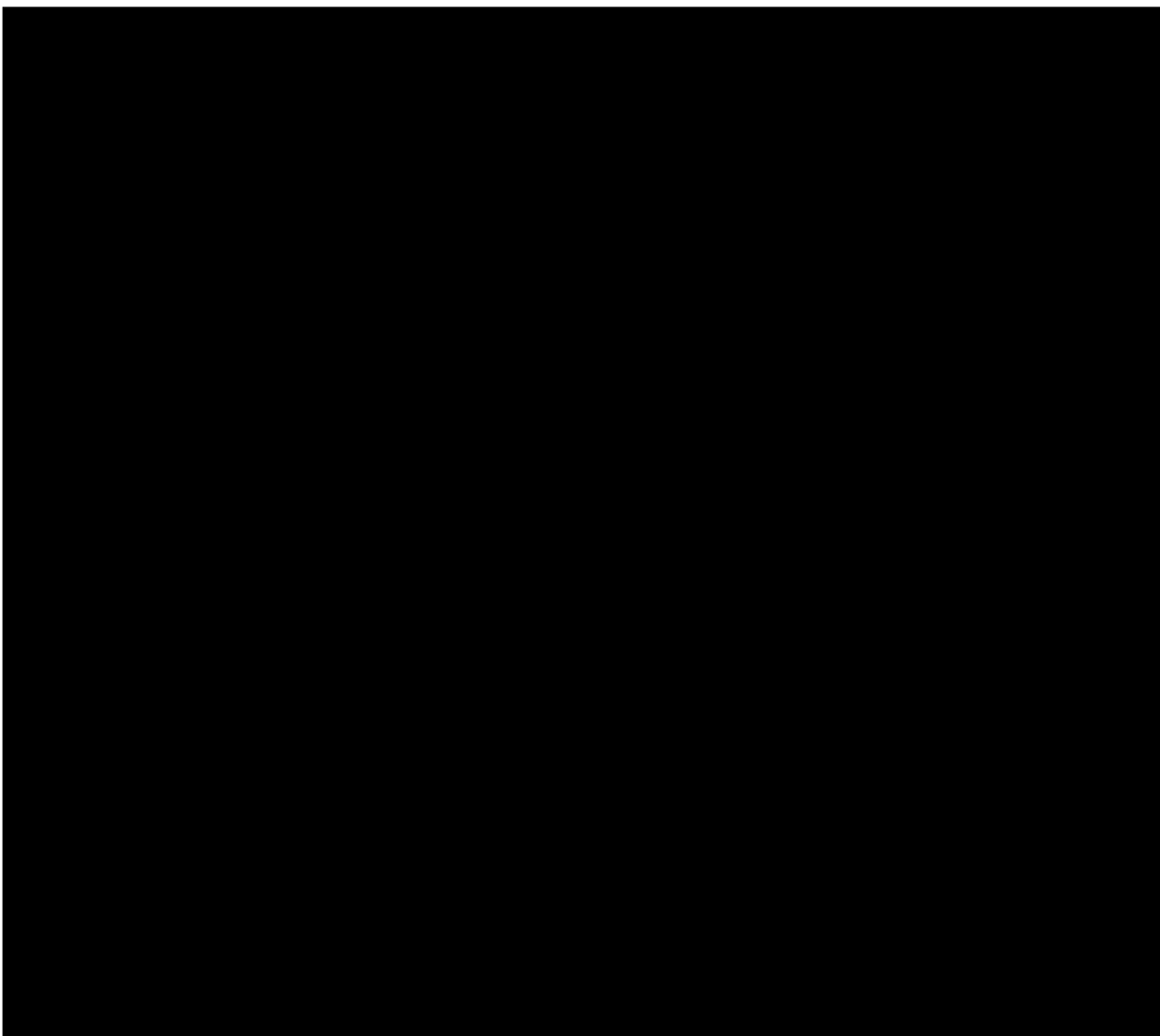
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<sup>5</sup> Though clearly within the scope of the Court's Paragraph 5 accounting (Dkt. 426), Defendants did not disclose this conversation on their LIDAR log.

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As objective evidence of the similarity between Waymo's trade secret





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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]  
 2 [REDACTED] This is a completely distinct design from [REDACTED]  
 3 [REDACTED] Just as with  
 4 the Court's analysis for Trade Secret No. 2 in its provisional relief order, "that Fuji — and, at least on  
 5 this record, no other LiDAR — copies such specific GBr3 specifications is striking evidence  
 6 suggesting that at least some information from Waymo's files has already found its way into Uber's  
 7 LiDAR designs." Dkt. 426 at 15. The same is true for Trade Secret No. 96.

8 The evidence (including at least testimony from Waymo witnesses Gary Brown, Kristinn  
 9 Gudjonsson, and Pierre-Yves Droz) will further show that this trade secret is fully described within the  
 10 14,000 files improperly downloaded by Anthony Levandowski on December 11, 2015 (for example, [REDACTED]

11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED] When asked about whether he used these files in designing the beam  
 14 spacing in Fuji, Mr. Levandowski declined to answer and took the Fifth Amendment. 8/22/2017  
 15 Levandowski Depo. at 103:19-104:3, 106:21-107:4, 119:17-120:2, 121:13-23, 128:1-10.

# **I. Trade Secret No. 111**

16  
 17 As to Waymo's Trade Secret No. 111 [REDACTED]  
 18 [REDACTED] the evidence to be  
 19 presented by Waymo at trial in this case through its expert witness Lambertus Hesselink and Uber's  
 20 witnesses (including at least James Haslim) will show that Uber improperly acquired from Anthony  
 21 Levandowski trade secret information and used it to helped guide its LiDAR research and  
 22 development efforts. For example, the evidence will show that Uber's [REDACTED]

23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]  
 26 [REDACTED] (See  
 27 8/9/17 Haslim Dep. at 476:17-20 (" [REDACTED]

1 [REDACTED]), 482:14-483:6 (“[REDACTED]”)  
 2 [REDACTED]  
 3 [REDACTED]  
 4 [REDACTED]”).)

5 \*\*\*\*\*

6 Based on all the evidence of trade secret misappropriation Waymo intends to offer at trial  
 7 outlined above, Waymo expects that Anthony Levandowski’s assertion of the Fifth Amendment  
 8 should result in additional facts supportive of trade secret misappropriation being drawn as adverse  
 9 inferences against Uber. (*See* Dkt. 818-4; Dkt. 834-4.)

## 10 **II. WAYMO’S OFFER OF PROOF AS TO OTTO TRUCKING**

11 Waymo expects to present evidence that Otto Trucking is vicariously liable for the trade secret  
 12 misappropriation of its Executive Chairman and Managing Member, Anthony Levandowski. *See*,  
 13 *e.g.*, *Extreme Reach, Inc. v. SpotGenie Partners, LLC*, No. CV1307563, 2013 WL 12081182, at \*7  
 14 (C.D. Cal. Nov. 22, 2013) (“SpotGenie may be liable for the Sales Managers’ misappropriation of  
 15 trade secrets under the doctrine of respondent superior . . . . California and federal courts have  
 16 allowed vicarious liability claims under the UTSA.”) (citing caselaw); *Language Line Servs., Inc.*  
 17 *v. Language Servs. Assocs., LLC*, No. C 10-02605, 2010 WL 2764714, at \*4 (N.D. Cal. July 13,  
 18 2010) (imputing trade secret misappropriation from employees to employer); *Competitive Techs.*  
 19 *v. Fujitsu Ltd.*, 286 F. Supp. 2d 1118, 1147-48 (N.D. Cal. 2003) (“[T]he Court finds that Fujitsu  
 20 has, nonetheless, stated a claim for misappropriation of trade secrets as to UI by alleging that  
 21 Competitive was ‘acting with and for UI.’ In particular, this allegation may be reasonably  
 22 construed as an allegation that UI ratified or approved Competitive’s conduct.”).

23 Moreover, Waymo expects to present evidence to support the doctrine of “ratification,”  
 24 *Fujitsu*, 286 F. Supp. 2d at 1148. In particular, despite Levandowski’s continued possession of  
 25 Waymo’s trade secrets, Otto Trucking refuses to take any remedial actions against him. This  
 26 alone shows Otto Trucking’s ratification of Levandowski’s misappropriation, thereby subjecting  
 27 Otto Trucking to liability. Cal. Civ. Code § 2310 (“A ratification can be made . . . by accepting or  
 28 retaining the benefit of the act, with notice thereof.”); *Contemporary Servs. Corp. v. Landmark*

1 *Event Staffing Servs., Inc.*, 677 Fed. App'x 314, 315 (9th Cir. 2017) ("CSC raised a triable issue as  
2 to whether Landmark unlawfully ratified employee Grant Haskell's misappropriation of CSC trade  
3 secrets when Landmark failed to cease the use of CSC documents, disavow Haskell's conduct, or  
4 terminate Haskell's employment after Landmark 'had reason to know' of Haskell's  
5 misappropriation."); *Ajaxo Inc. v. E\*Trade Grp., Inc.*, 135 Cal. App. 4th 21, 67-68 (2005).

6 With respect to Anthony Levandowski's misappropriation through acquisition, use, or  
7 disclosure of Waymo's asserted trade secrets (for which Otto Trucking is liable under vicarious  
8 liability or under the doctrine of ratification as discussed above), the evidence to be presented by  
9 Waymo at trial in this case through its witnesses (including at least Gary Brown and Kristinn  
10 Gudjonsson) will show that Anthony Levandowski improperly downloaded over 14,000 files from  
11 Waymo's SVN repository and additional documents from Waymo's Google Drive servers.

12 Waymo further expects to present evidence that Otto Trucking's misappropriation of trade  
13 secrets is ongoing. In particular, in his capacity as an Otto Trucking executive, Mr. Levandowski  
14 effectively increases Otto Trucking's value. (*See* Dkt. 515-13 at -7487.)

15 Finally, based on all the evidence of trade secret misappropriation Waymo intends to offer at  
16 trial outlined above, Waymo expects that Anthony Levandowski's assertion of the Fifth Amendment  
17 should result in additional facts supportive of trade secret misappropriation being drawn as adverse  
18 inferences against Otto Trucking. (*See* Dkt. 818-4; Dkt. 834-4.)

19  
20 DATED: August 24, 2017

QUINN EMANUEL URQUHART & SULLIVAN, LLP

21 By /s/ Charles K. Verhoeven

22 Charles K. Verhoeven  
23 Attorneys for WAYMO LLC  
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